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**ENGROSSED SUBSTITUTE SENATE BILL 5656**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Regala, White, McAuliffe, and Kline)

READ FIRST TIME 02/21/11.

1        AN ACT Relating to a state Indian child welfare act; amending RCW  
2 13.32A.152, 13.34.040, 13.34.070, 13.34.105, 13.34.130, 13.34.132,  
3 13.34.190, 26.10.034, 26.33.040, and 74.13.350; reenacting and amending  
4 RCW 13.34.030, 13.34.065, and 13.34.136; adding a new chapter to Title  
5 13 RCW; and repealing RCW 13.34.250.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7        NEW SECTION.    **Sec. 1.**    SHORT TITLE.    This chapter shall be known  
8 and cited as the "Washington state Indian child welfare act."

9        NEW SECTION.    **Sec. 2.**    APPLICATION.    This chapter shall apply in  
10 all child custody proceedings as that term is defined in this chapter.  
11 Whenever there is a conflict between chapter 13.32A, 13.34, 13.36,  
12 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

13        NEW SECTION.    **Sec. 3.**    INTENT.    The legislature finds that the  
14 state is committed to protecting the essential tribal relations and  
15 best interests of Indian children by promoting practices designed to  
16 prevent out-of-home placement of Indian children that is inconsistent  
17 with the rights of the parents, the health, safety, or welfare of the

1 children, or the interests of their tribe. Whenever out-of-home  
2 placement of an Indian child is necessary in a proceeding subject to  
3 the terms of the federal Indian child welfare act and in this chapter,  
4 the best interests of the Indian child may be served by placing the  
5 Indian child in accordance with the placement priorities expressed in  
6 this chapter. The legislature further finds that where placement away  
7 from the parent or Indian custodian is necessary for the child's  
8 safety, the state is committed to a placement that reflects and honors  
9 the unique values of the child's tribal culture and is best able to  
10 assist the Indian child in establishing, developing, and maintaining a  
11 political, cultural, social, and spiritual relationship with the  
12 child's tribe and tribal community.

13 It is the intent of the legislature that this chapter is a step in  
14 clarifying existing laws and codifying existing policies and practices.  
15 This chapter shall not be construed to reject or eliminate current  
16 policies and practices that are not included in its provisions.

17 The legislature further intends that nothing in this chapter is  
18 intended to interfere with policies and procedures that are derived  
19 from agreements entered into between the department and a tribe or  
20 tribes, as authorized by section 109 of the federal Indian child  
21 welfare act. The legislature finds that this chapter specifies the  
22 minimum requirements that must be applied in a child custody proceeding  
23 and does not prevent the department from providing a higher standard of  
24 protection to the right of any Indian child, parent, Indian custodian,  
25 or Indian child's tribe.

26 It is also the legislature's intent that the department's policy  
27 manual on Indian child welfare, the tribal-state agreement, and  
28 relevant local agreements between individual federally recognized  
29 tribes and the department should serve as persuasive guides in the  
30 interpretation and implementation of the federal Indian child welfare  
31 act, this chapter, and other relevant state laws.

32 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this  
33 section apply throughout this chapter unless the context clearly  
34 requires otherwise.

35 (1) "Active efforts" means the following:

36 (a) In any foster care placement or termination of parental rights  
37 proceeding of an Indian child under chapter 13.34 RCW and this chapter

1 where the department or a supervising agency as defined in RCW  
2 74.13.020 has a statutory or contractual duty to directly provide  
3 services to, or procure services for, the parent or parents or Indian  
4 custodian, or is providing services to a parent or parents or Indian  
5 custodian pursuant to a disposition order entered pursuant to RCW  
6 13.34.130, the department or supervising agency shall make timely and  
7 affirmative efforts to provide or procure such services, including  
8 engaging the parent or parents or Indian custodian in reasonably  
9 available and culturally appropriate preventive, remedial, or  
10 rehabilitative services. This shall include those services offered by  
11 tribes and Indian organizations whenever possible. At a minimum  
12 "active efforts" shall include:

13 (i) In any dependency proceeding under chapter 13.34 RCW seeking  
14 out-of-home placement of an Indian child in which the department or  
15 supervising agency provided voluntary services to the parent, parents,  
16 or Indian custodian prior to filing the dependency petition, a showing  
17 to the court that the department or supervising agency social workers  
18 actively worked with the parent, parents, or Indian custodian to engage  
19 them in remedial services and rehabilitation programs to prevent the  
20 breakup of the family beyond simply providing referrals to such  
21 services.

22 (ii) In any dependency proceeding under chapter 13.34 RCW, in which  
23 the petitioner is seeking the continued out-of-home placement of an  
24 Indian child, the department or supervising agency must show to the  
25 court that it has actively worked with the parent, parents, or Indian  
26 custodian in accordance with existing court orders and the individual  
27 service plan to engage them in remedial services and rehabilitative  
28 programs to prevent the breakup of the family beyond simply providing  
29 referrals to such services.

30 (iii) In any termination of parental rights proceeding regarding an  
31 Indian child under chapter 13.34 RCW in which the department or  
32 supervising agency provided services to the parent, parents, or Indian  
33 custodian, a showing to the court that the department or supervising  
34 agency social workers actively worked with the parent, parents, or  
35 Indian custodian to engage them in remedial services and rehabilitation  
36 programs ordered by the court or identified in the department or  
37 supervising agency's individual service and safety plan rather than  
38 requiring that the plan or court order be performed on its own.

1 (b) In any foster care placement or termination of parental rights  
2 proceeding in which the petitioner does not otherwise have a statutory  
3 or contractual duty to directly provide services to, or procure  
4 services for, the parent or Indian custodian, "active efforts" means a  
5 documented, concerted, and good faith effort to facilitate the parent's  
6 or Indian custodian's receipt of and engagement in services capable of  
7 meeting the criteria set out in (a) of this subsection.

8 (2) "Best interests of the Indian child" means the use of practices  
9 in accordance with the federal Indian child welfare act, this chapter,  
10 and other applicable law, that are designed to accomplish the  
11 following: (a) Protect the safety, well-being, development, and  
12 stability of the Indian child; (b) prevent the unnecessary out-of-home  
13 placement of the Indian child; (c) acknowledge the right of Indian  
14 tribes to maintain their existence and integrity which will promote the  
15 stability and security of their children and families; (d) recognize  
16 the value to the Indian child of establishing, developing, or  
17 maintaining a political, cultural, social, and spiritual relationship  
18 with the Indian child's tribe and tribal community; and (e) in a  
19 proceeding under this chapter where out-of-home placement is necessary,  
20 to prioritize placement of the Indian child in accordance with the  
21 placement preferences of this chapter.

22 (3) "Child custody proceeding" includes:

23 (a) "Foster care placement" which means any action removing an  
24 Indian child from his or her parent or Indian custodian for temporary  
25 placement in a foster home, institution, or with a relative, guardian,  
26 conservator, or suitable other person where the parent or Indian  
27 custodian cannot have the child returned upon demand, but where  
28 parental rights have not been terminated;

29 (b) "Termination of parental rights" which means any action  
30 resulting in the termination of the parent-child relationship;

31 (c) "Preadoptive placement" which means the temporary placement of  
32 an Indian child in a foster home or institution after the termination  
33 of parental rights but before or in lieu of adoptive placement; and

34 (d) "Adoptive placement" which means the permanent placement of an  
35 Indian child for adoption, including any action resulting in a final  
36 decree of adoption.

37 These terms shall not include a placement based upon an act which,

1 if committed by an adult, would be deemed a crime or upon an award, in  
2 a dissolution proceeding of custody to one of the parents.

3 (4) "Court of competent jurisdiction" means a federal or state  
4 court that entered an order in a child custody proceeding involving an  
5 Indian child, as long as the state court had proper subject matter  
6 jurisdiction in accordance with this chapter and the laws of that  
7 state, or the tribal court that had or has exclusive or concurrent  
8 jurisdiction pursuant to 25 U.S.C. Sec. 1911.

9 (5) "Department" means the department of social and health services  
10 and any of its divisions. "Department" also includes supervising  
11 agencies as defined in RCW 74.13.020(12) with which the department  
12 entered into a contract to provide services, care, placement, case  
13 management, contract monitoring, or supervision to children subject to  
14 a petition filed under chapter 13.34 or 26.33 RCW.

15 (6) "Indian" means a person who is a member of an Indian tribe, or  
16 who is an Alaska native and a member of a regional corporation as  
17 defined in 43 U.S.C. Sec. 1606.

18 (7) "Indian child" means an unmarried and unemancipated Indian  
19 person who is under eighteen years of age and is either: (a) A member  
20 of an Indian tribe; or (b) eligible for membership in an Indian tribe  
21 and is the biological child of a member of an Indian tribe.

22 (8) "Indian child's family" or "extended family member" means an  
23 individual, defined by the law or custom of the child's tribe, as a  
24 relative of the child. If the child's tribe does not identify such  
25 individuals by law or custom, the term means an adult who is the Indian  
26 child's grandparent, aunt, uncle, brother, sister, brother-in-law,  
27 sister-in-law, niece, nephew, first or second cousin, or step-parent,  
28 even following termination of the marriage.

29 (9) "Indian child's tribe" means a tribe in which an Indian child  
30 is a member or eligible for membership.

31 (10) "Indian custodian" means an Indian person who under tribal  
32 law, tribal custom, or state law, has legal or temporary physical  
33 custody of an Indian child, or to whom the parent has transferred  
34 temporary care, physical custody, and control of an Indian child.

35 (11) "Indian tribe" or "tribe" means any Indian tribe, band,  
36 nation, or other organized group or community of Indians recognized as  
37 eligible for the services provided to Indians by the secretary of the

1 interior because of their status as Indians, including any Alaska  
2 native village as defined in 43 U.S.C. Sec. 1602(c).

3 (12) "Member" and "membership" means a determination by an Indian  
4 tribe that a person is a member or eligible for membership in that  
5 Indian tribe.

6 (13) "Parent" means a biological parent or parents of an Indian  
7 child or a person who has lawfully adopted an Indian child, including  
8 adoptions made under tribal law or custom. "Parent" does not include  
9 an unwed father whose paternity has not been acknowledged or  
10 established.

11 (14) "Secretary of the interior" means the secretary of the United  
12 States department of the interior.

13 (15) "Tribal court" means a court or body vested by an Indian tribe  
14 with jurisdiction over child custody proceedings, including but not  
15 limited to a federal court of Indian offenses, a court established and  
16 operated under the code or custom of an Indian tribe, or an  
17 administrative body of an Indian tribe vested with authority over child  
18 custody proceedings.

19 (16) "Tribal customary adoption" means adoption or other process  
20 through the tribal custom, traditions, or laws of an Indian child's  
21 tribe by which the Indian child is permanently placed with a nonparent  
22 and through which the nonparent is vested with the rights, privileges,  
23 and obligations of a legal parent. Termination of the parent-child  
24 relationship between the Indian child and the biological parent is not  
25 required to effect or recognize a tribal customary adoption.

26 NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. Any party  
27 seeking the foster care placement of, termination of parental rights  
28 over, or the adoption of a child must make a good faith effort to  
29 determine whether the child is an Indian child. This shall be done by  
30 consultation with the child's parent or parents, any person who has  
31 custody of the child or with whom the child resides, and any other  
32 person that reasonably can be expected to have information regarding  
33 the child's possible membership or eligibility for membership in an  
34 Indian tribe to determine if the child is an Indian child, and by  
35 contacting any Indian tribe in which the child may be a member or may  
36 be eligible for membership. Preliminary contacts for the purpose of

1 making a good faith effort to determine a child's possible Indian  
2 status, do not constitute legal notice as required by section 7 of this  
3 act.

4 NEW SECTION. **Sec. 6.** JURISDICTION. (1) An Indian tribe shall  
5 have exclusive jurisdiction over any child custody proceeding involving  
6 an Indian child who resides or is domiciled within the reservation of  
7 that tribe, unless the tribe has consented to the state's concurrent  
8 jurisdiction, the tribe has expressly declined to exercise its  
9 exclusive jurisdiction, or the state is exercising emergency  
10 jurisdiction in strict compliance with section 14 of this act.

11 (2) If an Indian child is already a ward of a tribal court at the  
12 start of the child custody proceeding, the Indian tribe may retain  
13 exclusive jurisdiction, notwithstanding the residence or domicile of  
14 the child.

15 NEW SECTION. **Sec. 7.** NOTICE. (1) In any involuntary child  
16 custody proceeding seeking the foster care placement of, or the  
17 termination of parental rights to, a child in which the petitioning  
18 party or the court knows, or has reason to know, that the child is or  
19 may be an Indian child as defined in this chapter, the petitioning  
20 party shall notify the parent or Indian custodian and the Indian  
21 child's tribe or tribes, by certified mail, return receipt requested,  
22 and by use of a mandatory Indian child welfare act notice. If the  
23 identity or location of the parent or Indian custodian and the tribe  
24 cannot be determined, such notice shall be given to the secretary of  
25 the interior by registered mail, return receipt requested, in  
26 accordance with the regulations of the bureau of Indian affairs. The  
27 secretary of the interior has fifteen days after receipt to provide the  
28 requisite notice to the parent or Indian custodian and the tribe. No  
29 foster care placement or termination of parental rights proceeding  
30 shall be held until at least ten days after receipt of notice by the  
31 parent or Indian custodian and the tribe. The parent or Indian  
32 custodian or the tribe shall, upon request, be granted up to twenty  
33 additional days to prepare for the proceeding.

34 (2) The determination of the Indian status of a child shall be made  
35 as soon as practicable in order to serve the best interests of the  
36 Indian child and protect the interests of the child's tribe.

1 (3)(a) A written determination by an Indian tribe that a child is  
2 a member of or eligible for membership in that tribe, or testimony by  
3 the tribe attesting to such status shall be conclusive that the child  
4 is an Indian child;

5 (b) A written determination by an Indian tribe that a child is not  
6 a member of or eligible for membership in that tribe, or testimony by  
7 the tribe attesting to such status shall be conclusive that the child  
8 is not a member or eligible for membership in that tribe. Such  
9 determinations are presumptively those of the tribe where submitted in  
10 the form of a tribal resolution, or signed by or testified to by the  
11 person(s) authorized by the tribe's governing body to speak for the  
12 tribe, or by the tribe's agent designated to receive notice under the  
13 federal Indian child welfare act where such designation is published in  
14 the federal register;

15 (c) Where a tribe provides no response to notice under section 7 of  
16 this act, such nonresponse shall not constitute evidence that the child  
17 is not a member or eligible for membership. Provided, however, that  
18 under such circumstances the party asserting application of the federal  
19 Indian child welfare act, or this chapter, will have the burden of  
20 proving that the child is an Indian child.

21 (4) Where a child has been determined not to be an Indian child,  
22 any party to the proceeding, or an Indian tribe that subsequently  
23 determines the child is a member, may move the court for  
24 redetermination of the child's Indian status at any time based upon new  
25 evidence, redetermination by the child's tribe, or newly conferred  
26 federal recognition of the tribe.

27 NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any  
28 proceeding for the foster care placement of, or termination of parental  
29 rights to, an Indian child who is not domiciled or residing within the  
30 reservation of the Indian child's tribe, the court shall, in the  
31 absence of good cause to the contrary, transfer the proceeding to the  
32 jurisdiction of the Indian child's tribe, upon the motion of any of the  
33 following persons:

- 34 (a) Either of the child's parents;
- 35 (b) The child's Indian custodian;
- 36 (c) The child's tribe; or
- 37 (d) The child, if age twelve or older.

1 The transfer shall be subject to declination by the tribe. The tribe  
2 shall have seventy-five days to affirmatively respond to a motion or  
3 order transferring jurisdiction to the tribal court. A failure of the  
4 tribe to respond within the seventy-five day period shall be construed  
5 as a declination to accept transfer of the case.

6 (2) If the child's tribe has not formally intervened, the moving  
7 party shall serve a copy of the motion and all supporting documents on  
8 the tribal court to which the moving party seeks transfer.

9 (3) If either of the Indian child's parents objects to transfer of  
10 the proceeding to the Indian child's tribe, the court shall not  
11 transfer the proceeding.

12 (4) Following entry of an order transferring jurisdiction to the  
13 Indian child's tribe:

14 (a) Upon receipt of an order from a tribal court accepting  
15 jurisdiction, the state court shall dismiss the child custody  
16 proceeding without prejudice.

17 (b) Pending receipt of such tribal court order, the state court may  
18 conduct additional hearings and enter orders which strictly comply with  
19 the requirements of the federal Indian child welfare act and this  
20 chapter. The state court shall not enter a final order in any child  
21 custody proceeding, except an order dismissing the proceeding and  
22 returning the Indian child to the care of the parent or Indian  
23 custodian from whose care the child was removed, while awaiting receipt  
24 of a tribal court order accepting jurisdiction, or in the absence of a  
25 tribal court order or other formal written declination of jurisdiction.

26 (c) If the Indian child's tribe declines jurisdiction, the state  
27 court shall enter an order vacating the order transferring jurisdiction  
28 and proceed with adjudication of the child custody matter in strict  
29 compliance with the federal Indian child welfare act, this chapter, and  
30 any applicable tribal-state agreement.

31 NEW SECTION. **Sec. 9.** INTERVENTION. The Indian child, the Indian  
32 child's tribe or tribes, and the Indian custodian have the right to  
33 intervene at any point in any child custody proceeding involving the  
34 Indian child.

35 NEW SECTION. **Sec. 10.** FULL FAITH AND CREDIT. The state shall

1 give full faith and credit to the public acts, records, judicial  
2 proceedings, and judgments of any Indian tribe applicable to Indian  
3 child custody proceedings.

4 NEW SECTION. **Sec. 11.** RIGHT TO COUNSEL. In any child custody  
5 proceeding under this chapter in which the court determines the Indian  
6 child's parent or Indian custodian is indigent, the parent or Indian  
7 custodian shall have the right to court-appointed counsel. The court  
8 may, in its discretion, appoint counsel for the Indian child upon a  
9 finding that the appointment is in the best interests of the Indian  
10 child.

11 NEW SECTION. **Sec. 12.** RIGHT TO ACCESS TO EVIDENCE. Each party to  
12 a child custody proceeding involving an Indian child shall have the  
13 right to examine all reports or other documents filed with the court  
14 upon which any decision with respect to the proceeding may be based.

15 NEW SECTION. **Sec. 13.** EVIDENTIARY REQUIREMENTS. (1) A party  
16 seeking to effect a foster care placement of or termination of parental  
17 rights to an Indian child shall satisfy the court that active efforts  
18 have been made to provide remedial services and rehabilitative programs  
19 designed to prevent the breakup of the Indian family and that these  
20 efforts have proved unsuccessful.

21 (2) No foster care placement may be ordered in a child custody  
22 proceeding in the absence of a determination, supported by clear and  
23 convincing evidence, including testimony of qualified expert witnesses,  
24 that the continued custody of the child by the parent or Indian  
25 custodian is likely to result in serious emotional or physical damage  
26 to the child. For purposes of this subsection, any harm to the bond  
27 between the foster parent and the child that could result from removing  
28 the child from foster care shall not be the sole basis or primary  
29 reason for continuing the child in foster care.

30 (3) No termination of parental rights may be ordered in a child  
31 custody proceeding in the absence of a determination, supported by  
32 evidence beyond a reasonable doubt, including testimony of qualified  
33 expert witnesses, that the continued custody of the child by the parent  
34 or Indian custodian is likely to result in serious emotional or  
35 physical damage to the child.

1 (4)(a) For purposes of this section, "qualified expert witness"  
2 means a person who provides testimony in a proceeding under this  
3 chapter to assist a court in the determination of whether the continued  
4 custody of the child by, or return of the child to, the parent,  
5 parents, or Indian custodian, is likely to result in serious emotional  
6 or physical damage to the child. In any proceeding in which the  
7 child's Indian tribe has intervened pursuant to section 9 of this act  
8 or, if the department is the petitioner and the Indian child's tribe  
9 has entered into a local agreement with the department for the  
10 provision of child welfare services, the petitioner shall contact the  
11 tribe and ask the tribe to identify a tribal member or other person of  
12 the tribe's choice who is recognized by the tribe as knowledgeable  
13 regarding tribal customs as they pertain to family organization or  
14 child rearing practices. The petitioner shall notify the child's  
15 Indian tribe of the need to provide a "qualified expert witness" at  
16 least twenty days prior to any evidentiary hearing in which the  
17 testimony of the witness will be required. If the child's Indian tribe  
18 does not identify a "qualified expert witness" for the proceeding on a  
19 timely basis, the petitioner may proceed to identify such a witness  
20 pursuant to (b) of this subsection.

21 (b) In any proceeding in which the child's Indian tribe has not  
22 intervened or entered into a local agreement with the department for  
23 the provision of child welfare services, or a child's Indian tribe has  
24 not responded to a request to identify a "qualified expert witness" for  
25 the proceeding on a timely basis, the petitioner shall provide a  
26 "qualified expert witness" who meets one or more of the following  
27 requirements in descending order of preference:

28 (i) A member of the child's Indian tribe or other person of the  
29 tribe's choice who is recognized by the tribe as knowledgeable  
30 regarding tribal customs as they pertain to family organization or  
31 child rearing practices for this purpose;

32 (ii) Any person having substantial experience in the delivery of  
33 child and family services to Indians, and extensive knowledge of  
34 prevailing social and cultural standards and child rearing practices  
35 within the Indian child's tribe;

36 (iii) Any person having substantial experience in the delivery of  
37 child and family services to Indians, and knowledge of prevailing

1 social and cultural standards and child rearing practices in Indian  
2 tribes with cultural similarities to the Indian child's tribe; or

3 (iv) A professional person having substantial education and  
4 experience in the area of his or her specialty.

5 (c) When the petitioner is the department or a supervising agency,  
6 the currently assigned department or agency caseworker or the  
7 caseworker's supervisor may not testify as a "qualified expert witness"  
8 for purposes of this section. Nothing in this section shall bar the  
9 assigned department or agency caseworker or the caseworker's supervisor  
10 from testifying as an expert witness for other purposes in a proceeding  
11 under this chapter. Nothing in this section shall bar other department  
12 or supervising agency employees with appropriate expert qualifications  
13 or experience from testifying as a "qualified expert witness" in a  
14 proceeding under this chapter. Nothing in this section shall bar the  
15 petitioner or any other party in a proceeding under this chapter from  
16 providing additional witnesses or expert testimony, subject to the  
17 approval of the court, on any issue before the court including the  
18 determination of whether the continued custody of the child by, or  
19 return of the child to, the parent, parents, or Indian custodian, is  
20 likely to result in serious emotional or physical damage to the child.

21 NEW SECTION. **Sec. 14.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1)

22 Notwithstanding any other provision of federal or state law, nothing  
23 shall be construed to prevent the department or law enforcement from  
24 the emergency removal of an Indian child who is a resident of or is  
25 domiciled on an Indian reservation, but is temporarily located off the  
26 reservation, from his or her parent or Indian custodian or the  
27 emergency placement of such child in a foster home, under applicable  
28 state law, to prevent imminent physical damage or harm to the child.

29 (2) The department or law enforcement agency shall ensure that the  
30 emergency removal or placement terminates immediately when such removal  
31 or placement is no longer necessary to prevent imminent physical damage  
32 or harm to the child and shall expeditiously initiate a child custody  
33 proceeding subject to the provisions of the federal Indian child  
34 welfare act and this chapter to transfer the child to the jurisdiction  
35 of the appropriate Indian tribe or restore the child to the child's  
36 parent or Indian custodian, if appropriate.

1 (3) When the nature of the emergency allows, the department must  
2 notify the child's tribe before the removal has occurred. If prior  
3 notification is not possible, the department shall notify the child's  
4 tribe by the quickest means possible. The notice must contain the  
5 basis for the Indian child's removal, the time, date, and place of the  
6 initial hearing, and the tribe's right to intervene and participate in  
7 the proceeding. This notice shall not constitute the notice required  
8 under section 7 of this act for purposes of subsequent dependency,  
9 termination of parental rights, or adoption proceedings.

10 NEW SECTION. **Sec. 15.** CONSENT. (1) If an Indian child's parent  
11 or Indian custodian voluntarily consents to a foster care placement of  
12 the child or to termination of parental rights, the consent is not  
13 valid unless executed in writing and recorded before a judge of a court  
14 of competent jurisdiction and accompanied by the judge's certificate  
15 that the terms and consequences of the consent were fully explained in  
16 detail and were fully understood by the parent or Indian custodian.  
17 The court must also certify that either the parent or Indian custodian  
18 fully understood the explanation in English or that it was interpreted  
19 into a language that the parent or Indian custodian understood. Any  
20 consent for release of custody given prior to, or within ten days  
21 after, the birth of the Indian child shall not be valid.

22 (2) An Indian child's parent or Indian custodian may withdraw  
23 consent to a voluntary foster care placement at any time and, upon the  
24 withdrawal of consent, the child shall be returned to the parent or  
25 Indian custodian.

26 (3) In a voluntary proceeding for termination of parental rights  
27 to, or adoptive placement of, an Indian child, the consent of the  
28 parent may be withdrawn for any reason at any time prior to the entry  
29 of an order terminating parental rights or a final decree of adoption,  
30 and the child shall be returned to the parent.

31 (4) After the entry of a final decree of adoption of an Indian  
32 child, the parent may withdraw consent to the adoption upon the grounds  
33 that consent was obtained through fraud or duress. Upon a finding that  
34 such consent was obtained through fraud or duress the court shall  
35 vacate the decree and return the child to the parent. No adoption  
36 which has been effective for at least two years may be invalidated  
37 under this section unless otherwise allowed by state law.

1        NEW SECTION.    **Sec. 16.**    IMPROPER REMOVAL OF AN INDIAN CHILD.    If a  
2    petitioner in a child custody proceeding under this chapter has  
3    improperly removed the child from the custody of the parent or Indian  
4    custodian or has improperly retained custody after a visit or other  
5    temporary relinquishment of custody, the court shall decline  
6    jurisdiction over the petition and shall immediately return the child  
7    to the child's parent or Indian custodian unless returning the child to  
8    the parent or Indian custodian would subject the child to substantial  
9    and immediate danger or threat of such danger.

10       NEW SECTION.    **Sec. 17.**    REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR  
11    FOSTER CARE PLACEMENT.    (1) If a final decree of adoption of an Indian  
12    child has been vacated or set aside or the adoptive parents voluntarily  
13    consent to the termination of their parental rights to the child, the  
14    biological parent or prior Indian custodian may petition to have the  
15    child returned to their custody and the court shall grant the request  
16    unless there is a showing by clear and convincing evidence that return  
17    of custody to the biological parent or prior Indian custodian is not in  
18    the best interests of the Indian child.

19       (2) If an Indian child is removed from a foster care placement or  
20    a preadoptive or adoptive home for the purpose of further foster care,  
21    preadoptive, or adoptive placement, the placement shall be in  
22    accordance with this chapter, except when an Indian child is being  
23    returned to the parent or Indian custodian from whose custody the child  
24    was originally removed.

25       NEW SECTION.    **Sec. 18.**    PLACEMENT PREFERENCES.    (1) When an  
26    emergency removal, foster care placement, or preadoptive placement of  
27    an Indian child is necessary, a good faith effort will be made to place  
28    the Indian child:

- 29       (a) In the least restrictive setting;  
30       (b) Which most approximates a family situation;  
31       (c) Which is in reasonable proximity to the Indian child's home;  
32    and  
33       (d) In which the Indian child's special needs, if any, will be met.

34       (2) In any foster care or preadoptive placement, a preference shall  
35    be given, in absence of good cause to the contrary, to the child's  
36    placement with one of the following:

1 (a) A member of the child's extended family.  
2 (b) A foster home licensed, approved, or specified by the child's  
3 tribe.  
4 (c) An Indian foster home licensed or approved by an authorized  
5 non-Indian licensing authority.  
6 (d) A child foster care agency approved by an Indian tribe or  
7 operated by an Indian organization which has a program suitable to meet  
8 the Indian child's needs.  
9 (e) A non-Indian child foster care agency approved by the child's  
10 tribe.  
11 (f) A non-Indian family that is committed to:  
12 (i) Promoting and allowing appropriate extended family visitation;  
13 (ii) Establishing, maintaining, and strengthening the child's  
14 relationship with his or her tribe or tribes; and  
15 (iii) Participating in the cultural and ceremonial events of the  
16 child's tribe.  
17 (3) In the absence of good cause to the contrary, any adoptive or  
18 other permanent placement of an Indian child, preference shall be given  
19 to a placement with one of the following, in descending priority order:  
20 (a) Extended family members;  
21 (b) An Indian family of the same tribe as the child;  
22 (c) An Indian family that is of a similar culture to the child's  
23 tribe;  
24 (d) Another Indian family; or  
25 (e) Any other family which can provide a suitable home for an  
26 Indian child, such suitability to be determined in consultation with  
27 the Indian child's tribe or, where the Indian child's tribe has not  
28 intervened or participated, the local Indian child welfare advisory  
29 committee.  
30 (4) Notwithstanding the placement preferences listed in subsections  
31 (2) and (3) of this section, if a different order of placement  
32 preference is established by the child's tribe, the court or agency  
33 effecting the placement shall follow the order of preference  
34 established by the tribe so long as the placement is in the least  
35 restrictive setting appropriate to the particular needs of the child.  
36 Where appropriate, the preference of the Indian child or his or her  
37 parent shall be considered.

1 (5) The standards to be applied in meeting the preference  
2 requirements of this section shall be the prevailing social and  
3 cultural standards of the Indian community in which the parent or  
4 extended family members of an Indian child reside, or with which the  
5 parent or extended family members maintain social and cultural ties.

6 (6) Nothing in this section shall prevent the department or the  
7 court from placing the child with a parent to effectuate a permanent  
8 plan regardless of the parent's relationship to the child's tribe.

9 NEW SECTION. **Sec. 19.** COMPLIANCE. (1) The department, in  
10 consultation with Indian tribes, shall establish standards and  
11 procedures for the department's review of cases subject to this chapter  
12 and methods for monitoring the department's compliance with provisions  
13 of the federal Indian child welfare act and this chapter. These  
14 standards and procedures and the monitoring methods shall also be  
15 integrated into the department's child welfare contracting and contract  
16 monitoring process.

17 (2) Any Indian child who is the subject of any action for foster  
18 care placement or termination of parental rights under chapter 13.34 or  
19 26.33 RCW, any parent or Indian custodian from whose custody such child  
20 was removed, and the Indian child's tribe may petition any court of  
21 competent jurisdiction to invalidate such action upon a showing that  
22 such action violated provisions of this chapter or the federal Indian  
23 child welfare act.

24 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this act  
25 or its application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 **Sec. 21.** RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read  
29 as follows:

30 (1) Whenever a child in need of services petition is filed by: (a)  
31 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent  
32 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW  
33 13.32A.140, the filing party shall have a copy of the petition served  
34 on the parents of the youth. Service shall first be attempted in  
35 person and if unsuccessful, then by certified mail with return receipt.

1 (2) Whenever a child in need of services petition is filed by a  
2 youth or parent pursuant to RCW 13.32A.150, the court shall immediately  
3 notify the department that a petition has been filed.

4 (3)~~((a) Whenever))~~ When a child in need of services petition is  
5 filed by the department, and the court or the petitioning party knows  
6 or has reason to know that an Indian child is involved, the  
7 ~~((petitioning party shall promptly provide notice to the child's parent~~  
8 ~~or Indian custodian and to the agent designated by the child's Indian~~  
9 ~~tribe to receive such notices. Notice shall be by certified mail with~~  
10 ~~return receipt requested. If the identity or location of the parent or~~  
11 ~~Indian custodian and the tribe cannot be determined, notice shall be~~  
12 ~~given to the secretary of the interior in the manner described in 25~~  
13 ~~C.F.R. 23.11. If the child may be a member of more than one tribe, the~~  
14 ~~petitioning party shall send notice to all tribes the petitioner has~~  
15 ~~reason to know may be affiliated with the child.~~

16 ~~(b) The notice shall: (i) Contain a statement notifying the parent~~  
17 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~  
18 ~~the tribe of the tribe's right to intervene and/or request that the~~  
19 ~~case be transferred to tribal court))~~ provisions of chapter 13.--- RCW  
20 (the new chapter created in section 34 of this act) apply.

21 **Sec. 22.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s  
22 10, and 2010 c 94 s 6 are each reenacted and amended to read as  
23 follows:

24 For purposes of this chapter:

25 (1) "Abandoned" means when the child's parent, guardian, or other  
26 custodian has expressed, either by statement or conduct, an intent to  
27 forego, for an extended period, parental rights or responsibilities  
28 despite an ability to exercise such rights and responsibilities. If  
29 the court finds that the petitioner has exercised due diligence in  
30 attempting to locate the parent, no contact between the child and the  
31 child's parent, guardian, or other custodian for a period of three  
32 months creates a rebuttable presumption of abandonment, even if there  
33 is no expressed intent to abandon.

34 (2) "Child" and "juvenile" means any individual under the age of  
35 eighteen years.

36 (3) "Current placement episode" means the period of time that  
37 begins with the most recent date that the child was removed from the

1 home of the parent, guardian, or legal custodian for purposes of  
2 placement in out-of-home care and continues until: (a) The child  
3 returns home; (b) an adoption decree, a permanent custody order, or  
4 guardianship order is entered; or (c) the dependency is dismissed,  
5 whichever occurs first.

6 (4) "Department" means the department of social and health  
7 services.

8 (5) "Dependency guardian" means the person, nonprofit corporation,  
9 or Indian tribe appointed by the court pursuant to this chapter for the  
10 limited purpose of assisting the court in the supervision of the  
11 dependency.

12 (6) "Dependent child" means any child who:

13 (a) Has been abandoned;

14 (b) Is abused or neglected as defined in chapter 26.44 RCW by a  
15 person legally responsible for the care of the child; or

16 (c) Has no parent, guardian, or custodian capable of adequately  
17 caring for the child, such that the child is in circumstances which  
18 constitute a danger of substantial damage to the child's psychological  
19 or physical development.

20 (7) "Developmental disability" means a disability attributable to  
21 intellectual disability, cerebral palsy, epilepsy, autism, or another  
22 neurological or other condition of an individual found by the secretary  
23 to be closely related to an intellectual disability or to require  
24 treatment similar to that required for individuals with intellectual  
25 disabilities, which disability originates before the individual attains  
26 age eighteen, which has continued or can be expected to continue  
27 indefinitely, and which constitutes a substantial limitation to the  
28 individual.

29 (8) "Guardian" means the person or agency that: (a) Has been  
30 appointed as the guardian of a child in a legal proceeding, including  
31 a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the  
32 legal right to custody of the child pursuant to such appointment. The  
33 term "guardian" does not include a "dependency guardian" appointed  
34 pursuant to a proceeding under this chapter.

35 (9) "Guardian ad litem" means a person, appointed by the court to  
36 represent the best interests of a child in a proceeding under this  
37 chapter, or in any matter which may be consolidated with a proceeding  
38 under this chapter. A "court-appointed special advocate" appointed by

1 the court to be the guardian ad litem for the child, or to perform  
2 substantially the same duties and functions as a guardian ad litem,  
3 shall be deemed to be guardian ad litem for all purposes and uses of  
4 this chapter.

5 (10) "Guardian ad litem program" means a court-authorized volunteer  
6 program, which is or may be established by the superior court of the  
7 county in which such proceeding is filed, to manage all aspects of  
8 volunteer guardian ad litem representation for children alleged or  
9 found to be dependent. Such management shall include but is not  
10 limited to: Recruitment, screening, training, supervision, assignment,  
11 and discharge of volunteers.

12 (11) "Housing assistance" means appropriate referrals by the  
13 department or other supervising agencies to federal, state, local, or  
14 private agencies or organizations, assistance with forms, applications,  
15 or financial subsidies or other monetary assistance for housing. For  
16 purposes of this chapter, "housing assistance" is not a remedial  
17 service or time-limited family reunification service as described in  
18 RCW 13.34.025(2).

19 (12) "Indigent" means a person who, at any stage of a court  
20 proceeding, is:

21 (a) Receiving one of the following types of public assistance:  
22 Temporary assistance for needy families, disability lifeline benefits,  
23 poverty-related veterans' benefits, food stamps or food stamp benefits  
24 transferred electronically, refugee resettlement benefits, medicaid, or  
25 supplemental security income; or

26 (b) Involuntarily committed to a public mental health facility; or

27 (c) Receiving an annual income, after taxes, of one hundred twenty-  
28 five percent or less of the federally established poverty level; or

29 (d) Unable to pay the anticipated cost of counsel for the matter  
30 before the court because his or her available funds are insufficient to  
31 pay any amount for the retention of counsel.

32 (13) "Out-of-home care" means placement in a foster family home or  
33 group care facility licensed pursuant to chapter 74.15 RCW or placement  
34 in a home, other than that of the child's parent, guardian, or legal  
35 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

36 (14) "Preventive services" means preservation services, as defined  
37 in chapter 74.14C RCW, and other reasonably available services,

1 including housing assistance, capable of preventing the need for out-  
2 of-home placement while protecting the child.

3 (15) "Shelter care" means temporary physical care in a facility  
4 licensed pursuant to RCW 74.15.030 or in a home not required to be  
5 licensed pursuant to RCW 74.15.030.

6 (16) "Sibling" means a child's birth brother, birth sister,  
7 adoptive brother, adoptive sister, half-brother, or half-sister, or as  
8 defined by the law or custom of the Indian child's tribe for an Indian  
9 child as defined in (~~(25 U.S.C. Sec. 1903(4))~~) section 4 of this act.

10 (17) "Social study" means a written evaluation of matters relevant  
11 to the disposition of the case and shall contain the following  
12 information:

13 (a) A statement of the specific harm or harms to the child that  
14 intervention is designed to alleviate;

15 (b) A description of the specific services and activities, for both  
16 the parents and child, that are needed in order to prevent serious harm  
17 to the child; the reasons why such services and activities are likely  
18 to be useful; the availability of any proposed services; and the  
19 agency's overall plan for ensuring that the services will be delivered.  
20 The description shall identify the services chosen and approved by the  
21 parent;

22 (c) If removal is recommended, a full description of the reasons  
23 why the child cannot be protected adequately in the home, including a  
24 description of any previous efforts to work with the parents and the  
25 child in the home; the in-home treatment programs that have been  
26 considered and rejected; the preventive services, including housing  
27 assistance, that have been offered or provided and have failed to  
28 prevent the need for out-of-home placement, unless the health, safety,  
29 and welfare of the child cannot be protected adequately in the home;  
30 and the parents' attitude toward placement of the child;

31 (d) A statement of the likely harms the child will suffer as a  
32 result of removal;

33 (e) A description of the steps that will be taken to minimize the  
34 harm to the child that may result if separation occurs including an  
35 assessment of the child's relationship and emotional bond with any  
36 siblings, and the agency's plan to provide ongoing contact between the  
37 child and the child's siblings if appropriate; and

1 (f) Behavior that will be expected before determination that  
2 supervision of the family or placement is no longer necessary.

3 (18) "Supervising agency" means an agency licensed by the state  
4 under RCW 74.15.090, or licensed by a federally recognized Indian tribe  
5 located in this state under RCW 74.15.190, that has entered into a  
6 performance-based contract with the department to provide case  
7 management for the delivery and documentation of child welfare services  
8 as defined in RCW 74.13.020.

9 **Sec. 23.** RCW 13.34.040 and 2004 c 64 s 3 are each amended to read  
10 as follows:

11 (1) Any person may file with the clerk of the superior court a  
12 petition showing that there is within the county, or residing within  
13 the county, a dependent child and requesting that the superior court  
14 deal with such child as provided in this chapter. There shall be no  
15 fee for filing such petitions.

16 (2) In counties having paid probation officers, these officers  
17 shall, to the extent possible, first determine if a petition is  
18 reasonably justifiable. Each petition shall be verified and contain a  
19 statement of facts constituting a dependency, and the names and  
20 residence, if known to the petitioner, of the parents, guardian, or  
21 custodian of the alleged dependent child.

22 (3) Every petition filed in proceedings under this chapter shall  
23 contain a statement alleging whether the child is or may be an Indian  
24 child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If  
25 the child is an Indian child ~~((as defined under the Indian child  
26 welfare act, the provisions of the act))~~ chapter 13.--- RCW (the new  
27 chapter created in section 34 of this act) shall apply.

28 (4) Every order or decree entered under this chapter shall contain  
29 a finding that the federal Indian child welfare act or chapter 13.---  
30 RCW (the new chapter created in section 34 of this act) does or does  
31 not apply. Where there is a finding that the federal Indian child  
32 welfare act or chapter 13.--- RCW (the new chapter created in section  
33 34 of this act) does apply, the decree or order must also contain a  
34 finding that all notice requirements and evidentiary requirements under  
35 the federal Indian child welfare act and chapter 13.--- RCW (the new  
36 chapter created in section 34 of this act) have been satisfied.

1       **Sec. 24.** RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009  
2 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as  
3 follows:

4       (1)(a) When a child is taken into custody, the court shall hold a  
5 shelter care hearing within seventy-two hours, excluding Saturdays,  
6 Sundays, and holidays. The primary purpose of the shelter care hearing  
7 is to determine whether the child can be immediately and safely  
8 returned home while the adjudication of the dependency is pending.

9       (b) Any parent, guardian, or legal custodian who for good cause is  
10 unable to attend the shelter care hearing may request that a subsequent  
11 shelter care hearing be scheduled. The request shall be made to the  
12 clerk of the court where the petition is filed prior to the initial  
13 shelter care hearing. Upon the request of the parent, the court shall  
14 schedule the hearing within seventy-two hours of the request, excluding  
15 Saturdays, Sundays, and holidays. The clerk shall notify all other  
16 parties of the hearing by any reasonable means.

17       (2)(a) If it is likely that the child will remain in shelter care  
18 longer than seventy-two hours, in those areas in which child welfare  
19 services are being provided by a supervising agency, the supervising  
20 agency shall assume case management responsibilities of the case. The  
21 department or supervising agency shall submit a recommendation to the  
22 court as to the further need for shelter care in all cases in which the  
23 child will remain in shelter care longer than the seventy-two hour  
24 period. In all other cases, the recommendation shall be submitted by  
25 the juvenile court probation counselor.

26       (b) All parties have the right to present testimony to the court  
27 regarding the need or lack of need for shelter care.

28       (c) Hearsay evidence before the court regarding the need or lack of  
29 need for shelter care must be supported by sworn testimony, affidavit,  
30 or declaration of the person offering such evidence.

31       (3)(a) At the commencement of the hearing, the court shall notify  
32 the parent, guardian, or custodian of the following:

33       (i) The parent, guardian, or custodian has the right to a shelter  
34 care hearing;

35       (ii) The nature of the shelter care hearing, the rights of the  
36 parents, and the proceedings that will follow; and

37       (iii) If the parent, guardian, or custodian is not represented by

1 counsel, the right to be represented. If the parent, guardian, or  
2 custodian is indigent, the court shall appoint counsel as provided in  
3 RCW 13.34.090; and

4 (b) If a parent, guardian, or legal custodian desires to waive the  
5 shelter care hearing, the court shall determine, on the record and with  
6 the parties present, whether such waiver is knowing and voluntary. A  
7 parent may not waive his or her right to the shelter care hearing  
8 unless he or she appears in court and the court determines that the  
9 waiver is knowing and voluntary. Regardless of whether the court  
10 accepts the parental waiver of the shelter care hearing, the court must  
11 provide notice to the parents of their rights required under (a) of  
12 this subsection and make the finding required under subsection (4) of  
13 this section.

14 (4) At the shelter care hearing the court shall examine the need  
15 for shelter care and inquire into the status of the case. The  
16 paramount consideration for the court shall be the health, welfare, and  
17 safety of the child. At a minimum, the court shall inquire into the  
18 following:

19 (a) Whether the notice required under RCW 13.34.062 was given to  
20 all known parents, guardians, or legal custodians of the child. The  
21 court shall make an express finding as to whether the notice required  
22 under RCW 13.34.062 was given to the parent, guardian, or legal  
23 custodian. If actual notice was not given to the parent, guardian, or  
24 legal custodian and the whereabouts of such person is known or can be  
25 ascertained, the court shall order the department to make reasonable  
26 efforts to advise the parent, guardian, or legal custodian of the  
27 status of the case, including the date and time of any subsequent  
28 hearings, and their rights under RCW 13.34.090;

29 (b) Whether the child can be safely returned home while the  
30 adjudication of the dependency is pending;

31 (c) What efforts have been made to place the child with a relative.  
32 The court shall ask the parents whether the department discussed with  
33 them the placement of the child with a relative or other suitable  
34 person described in RCW 13.34.130(1)(b) and shall determine what  
35 efforts have been made toward such a placement;

36 (d) What services were provided to the family to prevent or  
37 eliminate the need for removal of the child from the child's home. If  
38 the dependency petition or other information before the court alleges

1 that homelessness or the lack of suitable housing was a significant  
2 factor contributing to the removal of the child, the court shall  
3 inquire as to whether housing assistance was provided to the family to  
4 prevent or eliminate the need for removal of the child or children;

5 (e) Is the placement proposed by the department or supervising  
6 agency the least disruptive and most family-like setting that meets the  
7 needs of the child;

8 (f) Whether it is in the best interest of the child to remain  
9 enrolled in the school, developmental program, or child care the child  
10 was in prior to placement and what efforts have been made to maintain  
11 the child in the school, program, or child care if it would be in the  
12 best interest of the child to remain in the same school, program, or  
13 child care;

14 (g) Appointment of a guardian ad litem or attorney;

15 (h) Whether the child is or may be an Indian child as defined in  
16 (~~25 U.S.C. Sec. 1903~~) section 4 of this act, whether the provisions  
17 of the federal Indian child welfare act or chapter 13.--- RCW (the new  
18 chapter created in section 34 of this act) apply, and whether there is  
19 compliance with the federal Indian child welfare act and chapter 13.---  
20 RCW (the new chapter created in section 34 of this act), including  
21 notice to the child's tribe;

22 (i) Whether, as provided in RCW 26.44.063, restraining orders, or  
23 orders expelling an allegedly abusive household member from the home of  
24 a nonabusive parent, guardian, or legal custodian, will allow the child  
25 to safely remain in the home;

26 (j) Whether any orders for examinations, evaluations, or immediate  
27 services are needed. The court may not order a parent to undergo  
28 examinations, evaluation, or services at the shelter care hearing  
29 unless the parent agrees to the examination, evaluation, or service;

30 (k) The terms and conditions for parental, sibling, and family  
31 visitation.

32 (5)(a) The court shall release a child alleged to be dependent to  
33 the care, custody, and control of the child's parent, guardian, or  
34 legal custodian unless the court finds there is reasonable cause to  
35 believe that:

36 (i) After consideration of the specific services that have been  
37 provided, reasonable efforts have been made to prevent or eliminate the

1 need for removal of the child from the child's home and to make it  
2 possible for the child to return home; and

3 (ii)(A) The child has no parent, guardian, or legal custodian to  
4 provide supervision and care for such child; or

5 (B) The release of such child would present a serious threat of  
6 substantial harm to such child, notwithstanding an order entered  
7 pursuant to RCW 26.44.063; or

8 (C) The parent, guardian, or custodian to whom the child could be  
9 released has been charged with violating RCW 9A.40.060 or 9A.40.070.

10 (b) If the court does not release the child to his or her parent,  
11 guardian, or legal custodian, the court shall order placement with a  
12 relative or other suitable person as described in RCW 13.34.130(1)(b),  
13 unless there is reasonable cause to believe the health, safety, or  
14 welfare of the child would be jeopardized or that the efforts to  
15 reunite the parent and child will be hindered. The court must also  
16 determine whether placement with the relative or other suitable person  
17 is in the child's best interests. The relative or other suitable  
18 person must be willing and available to:

19 (i) Care for the child and be able to meet any special needs of the  
20 child;

21 (ii) Facilitate the child's visitation with siblings, if such  
22 visitation is part of the supervising agency's plan or is ordered by  
23 the court; and

24 (iii) Cooperate with the department or supervising agency in  
25 providing necessary background checks and home studies.

26 (c) If the child was not initially placed with a relative or other  
27 suitable person, and the court does not release the child to his or her  
28 parent, guardian, or legal custodian, the supervising agency shall make  
29 reasonable efforts to locate a relative or other suitable person  
30 pursuant to RCW 13.34.060(1). In determining placement, the court  
31 shall weigh the child's length of stay and attachment to the current  
32 provider in determining what is in the best interest of the child.

33 (d) If a relative or other suitable person is not available, the  
34 court shall order continued shelter care and shall set forth its  
35 reasons for the order. If the court orders placement of the child with  
36 a person not related to the child and not licensed to provide foster  
37 care, the placement is subject to all terms and conditions of this  
38 section that apply to relative placements.

1 (e) Any placement with a relative, or other suitable person  
2 approved by the court pursuant to this section, shall be contingent  
3 upon cooperation with the department's or supervising agency's case  
4 plan and compliance with court orders related to the care and  
5 supervision of the child including, but not limited to, court orders  
6 regarding parent-child contacts, sibling contacts, and any other  
7 conditions imposed by the court. Noncompliance with the case plan or  
8 court order is grounds for removal of the child from the home of the  
9 relative or other suitable person, subject to review by the court.

10 (f) Uncertainty by a parent, guardian, legal custodian, relative,  
11 or other suitable person that the alleged abuser has in fact abused the  
12 child shall not, alone, be the basis upon which a child is removed from  
13 the care of a parent, guardian, or legal custodian under (a) of this  
14 subsection, nor shall it be a basis, alone, to preclude placement with  
15 a relative or other suitable person under (b) of this subsection.

16 (6)(a) A shelter care order issued pursuant to this section shall  
17 include the requirement for a case conference as provided in RCW  
18 13.34.067. However, if the parent is not present at the shelter care  
19 hearing, or does not agree to the case conference, the court shall not  
20 include the requirement for the case conference in the shelter care  
21 order.

22 (b) If the court orders a case conference, the shelter care order  
23 shall include notice to all parties and establish the date, time, and  
24 location of the case conference which shall be no later than thirty  
25 days before the fact-finding hearing.

26 (c) The court may order another conference, case staffing, or  
27 hearing as an alternative to the case conference required under RCW  
28 13.34.067 so long as the conference, case staffing, or hearing ordered  
29 by the court meets all requirements under RCW 13.34.067, including the  
30 requirement of a written agreement specifying the services to be  
31 provided to the parent.

32 (7)(a) A shelter care order issued pursuant to this section may be  
33 amended at any time with notice and hearing thereon. The shelter care  
34 decision of placement shall be modified only upon a showing of change  
35 in circumstances. No child may be placed in shelter care for longer  
36 than thirty days without an order, signed by the judge, authorizing  
37 continued shelter care.

1 (b)(i) An order releasing the child on any conditions specified in  
2 this section may at any time be amended, with notice and hearing  
3 thereon, so as to return the child to shelter care for failure of the  
4 parties to conform to the conditions originally imposed.

5 (ii) The court shall consider whether nonconformance with any  
6 conditions resulted from circumstances beyond the control of the  
7 parent, guardian, or legal custodian and give weight to that fact  
8 before ordering return of the child to shelter care.

9 (8)(a) If a child is returned home from shelter care a second time  
10 in the case, or if the supervisor of the caseworker deems it necessary,  
11 the multidisciplinary team may be reconvened.

12 (b) If a child is returned home from shelter care a second time in  
13 the case a law enforcement officer must be present and file a report to  
14 the department.

15 **Sec. 25.** RCW 13.34.070 and 2004 c 64 s 4 are each amended to read  
16 as follows:

17 (1) Upon the filing of the petition, the clerk of the court shall  
18 issue a summons, one directed to the child, if the child is twelve or  
19 more years of age, and another to the parents, guardian, or custodian,  
20 and such other persons as appear to the court to be proper or necessary  
21 parties to the proceedings, requiring them to appear personally before  
22 the court at the time fixed to hear the petition. If the child is  
23 developmentally disabled and not living at home, the notice shall be  
24 given to the child's custodian as well as to the child's parent. The  
25 developmentally disabled child shall not be required to appear unless  
26 requested by the court. When the custodian is summoned, the parent or  
27 guardian or both shall also be served with a summons. The fact-finding  
28 hearing on the petition shall be held no later than seventy-five days  
29 after the filing of the petition, unless exceptional reasons for a  
30 continuance are found. The party requesting the continuance shall have  
31 the burden of proving by a preponderance of the evidence that  
32 exceptional circumstances exist. To ensure that the hearing on the  
33 petition occurs within the seventy-five day time limit, the court shall  
34 schedule and hear the matter on an expedited basis.

35 (2) A copy of the petition shall be attached to each summons.

36 (3) The summons shall advise the parties of the right to counsel.

1 The summons shall also inform the child's parent, guardian, or legal  
2 custodian of his or her right to appointed counsel, if indigent, and of  
3 the procedure to use to secure appointed counsel.

4 (4) The summons shall advise the parents that they may be held  
5 responsible for the support of the child if the child is placed in out-  
6 of-home care.

7 (5) The judge may endorse upon the summons an order directing any  
8 parent, guardian, or custodian having the custody or control of the  
9 child to bring the child to the hearing.

10 (6) If it appears from affidavit or sworn statement presented to  
11 the judge that there is probable cause for the issuance of a warrant of  
12 arrest or that the child needs to be taken into custody pursuant to RCW  
13 13.34.050, the judge may endorse upon the summons an order that an  
14 officer serving the summons shall at once take the child into custody  
15 and take him or her to the place of shelter designated by the court.

16 (7) If the person summoned as provided in this section is subject  
17 to an order of the court pursuant to subsection (5) or (6) of this  
18 section, and if the person fails to abide by the order, he or she may  
19 be proceeded against as for contempt of court. The order endorsed upon  
20 the summons shall conspicuously display the following legend:

21 NOTICE:

22 VIOLATION OF THIS ORDER

23 IS SUBJECT TO PROCEEDING

24 FOR CONTEMPT OF COURT

25 PURSUANT TO RCW 13.34.070.

26 (8) If a party to be served with a summons can be found within the  
27 state, the summons shall be served upon the party personally as soon as  
28 possible following the filing of the petition, but in no case later  
29 than fifteen court days before the fact-finding hearing, or such time  
30 as set by the court. If the party is within the state and cannot be  
31 personally served, but the party's address is known or can with  
32 reasonable diligence be ascertained, the summons may be served upon the  
33 party by mailing a copy by certified mail as soon as possible following  
34 the filing of the petition, but in no case later than fifteen court  
35 days before the hearing, or such time as set by the court. If a party  
36 other than the child is without the state but can be found or the  
37 address is known, or can with reasonable diligence be ascertained,  
38 service of the summons may be made either by delivering a copy to the

1 party personally or by mailing a copy thereof to the party by certified  
2 mail at least ten court days before the fact-finding hearing, or such  
3 time as set by the court.

4 (9) Service of summons may be made under the direction of the court  
5 by any person eighteen years of age or older who is not a party to the  
6 proceedings or by any law enforcement officer, probation counselor, or  
7 department employee.

8 (10)((+a)) Whenever the court or the petitioning party in a  
9 proceeding under this chapter knows or has reason to know that an  
10 Indian child as defined in section 4 of this act is involved, the  
11 petitioning party shall promptly provide notice to the child's parent  
12 or Indian custodian and to the agent designated by the child's Indian  
13 tribe to receive such notices. Notice shall ~~((be by certified mail  
14 with return receipt requested. If the identity or location of the  
15 parent or Indian custodian and the tribe cannot be determined, notice  
16 shall be given to the secretary of the interior in the manner described  
17 in 25 C.F.R. 23.11. If the child may be a member of more than one  
18 tribe, the petitioning party shall send notice to all tribes the  
19 petitioner has reason to know may be affiliated with the child.~~

20 ~~(b) The notice shall: (i) Contain a statement notifying the parent  
21 or custodian and the tribe of the pending proceeding; and (ii) notify  
22 the tribe of the tribe's right to intervene and/or request that the  
23 case be transferred to tribal court))~~ comply with section 7 of this  
24 act.

25 **Sec. 26.** RCW 13.34.105 and 2010 c 180 s 3 are each amended to read  
26 as follows:

27 (1) Unless otherwise directed by the court, the duties of the  
28 guardian ad litem for a child subject to a proceeding under this  
29 chapter, including an attorney specifically appointed by the court to  
30 serve as a guardian ad litem, include but are not limited to the  
31 following:

32 (a) To investigate, collect relevant information about the child's  
33 situation, and report to the court factual information regarding the  
34 best interests of the child;

35 (b) To meet with, interview, or observe the child, depending on the  
36 child's age and developmental status, and report to the court any views  
37 or positions expressed by the child on issues pending before the court;

1 (c) To monitor all court orders for compliance and to bring to the  
2 court's attention any change in circumstances that may require a  
3 modification of the court's order;

4 (d) To report to the court information on the legal status of a  
5 child's membership in any Indian tribe or band;

6 (e) Court-appointed special advocates and guardians ad litem may  
7 make recommendations based upon an independent investigation regarding  
8 the best interests of the child, which the court may consider and weigh  
9 in conjunction with the recommendations of all of the parties;

10 (f) To represent and be an advocate for the best interests of the  
11 child; (~~and~~)

12 (g) To inform the child, if the child is twelve years old or older,  
13 of his or her right to request counsel and to ask the child whether he  
14 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The  
15 guardian ad litem shall report to the court that the child was notified  
16 of this right and indicate the child's position regarding appointment  
17 of counsel. The guardian ad litem shall report to the court his or her  
18 independent recommendation as to whether appointment of counsel is in  
19 the best interest of the child; and

20 (h) In the case of an Indian child as defined in section 4 of this  
21 act, know, understand, and advocate the best interests of the Indian  
22 child.

23 (2) A guardian ad litem shall be deemed an officer of the court for  
24 the purpose of immunity from civil liability.

25 (3) Except for information or records specified in RCW  
26 13.50.100(7), the guardian ad litem shall have access to all  
27 information available to the state or agency on the case. Upon  
28 presentation of the order of appointment by the guardian ad litem, any  
29 agency, hospital, school organization, division or department of the  
30 state, doctor, nurse, or other health care provider, psychologist,  
31 psychiatrist, police department, or mental health clinic shall permit  
32 the guardian ad litem to inspect and copy any records relating to the  
33 child or children involved in the case, without the consent of the  
34 parent or guardian of the child, or of the child if the child is under  
35 the age of thirteen years, unless such access is otherwise specifically  
36 prohibited by law.

37 (4) A guardian ad litem may release confidential information,

1 records, and reports to the office of the family and children's  
2 ombudsman for the purposes of carrying out its duties under chapter  
3 43.06A RCW.

4 (5) The guardian ad litem shall release case information in  
5 accordance with the provisions of RCW 13.50.100.

6 **Sec. 27.** RCW 13.34.130 and 2010 c 288 s 1 are each amended to read  
7 as follows:

8 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has  
9 been proven by a preponderance of the evidence that the child is  
10 dependent within the meaning of RCW 13.34.030 after consideration of  
11 the social study prepared pursuant to RCW 13.34.110 and after a  
12 disposition hearing has been held pursuant to RCW 13.34.110, the court  
13 shall enter an order of disposition pursuant to this section.

14 (1) The court shall order one of the following dispositions of the  
15 case:

16 (a) Order a disposition other than removal of the child from his or  
17 her home, which shall provide a program designed to alleviate the  
18 immediate danger to the child, to mitigate or cure any damage the child  
19 has already suffered, and to aid the parents so that the child will not  
20 be endangered in the future. In determining the disposition, the court  
21 should choose services to assist the parents in maintaining the child  
22 in the home, including housing assistance, if appropriate, that least  
23 interfere with family autonomy and are adequate to protect the child.

24 (b)(i) Order the child to be removed from his or her home and into  
25 the custody, control, and care of a relative or other suitable person,  
26 the department, or a supervising agency for supervision of the child's  
27 placement. The court may not order an Indian child, as defined in (~~25~~  
28 ~~U.S.C. Sec. 1903~~)) section 4 of this act, to be removed from his or her  
29 home unless the court finds, by clear and convincing evidence including  
30 testimony of qualified expert witnesses, that the continued custody of  
31 the child by the parent or Indian custodian is likely to result in  
32 serious emotional or physical damage to the child.

33 (ii) The department or supervising agency has the authority to  
34 place the child, subject to review and approval by the court (A) with  
35 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of  
36 another suitable person if the child or family has a preexisting  
37 relationship with that person, and the person has completed all

1 required criminal history background checks and otherwise appears to  
2 the department or supervising agency to be suitable and competent to  
3 provide care for the child, or (C) in a foster family home or group  
4 care facility licensed pursuant to chapter 74.15 RCW. Absent good  
5 cause, the department or supervising agency shall follow the wishes of  
6 the natural parent regarding the placement of the child in accordance  
7 with RCW 13.34.260. The department or supervising agency may only  
8 place a child with a person not related to the child as defined in RCW  
9 74.15.020(2)(a) when the court finds that such placement is in the best  
10 interest of the child. Unless there is reasonable cause to believe  
11 that the health, safety, or welfare of the child would be jeopardized  
12 or that efforts to reunite the parent and child will be hindered, the  
13 child shall be placed with a person who is willing, appropriate, and  
14 available to care for the child, and who is: (I) Related to the child  
15 as defined in RCW 74.15.020(2)(a) with whom the child has a  
16 relationship and is comfortable; or (II) a suitable person as described  
17 in this subsection (1)(b). The court shall consider the child's  
18 existing relationships and attachments when determining placement.

19 (2) When placing an Indian child in out-of-home care, the  
20 department or supervising agency shall follow the placement preference  
21 characteristics in (~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~) section  
22 18 of this act.

23 (3) Placement of the child with a relative or other suitable person  
24 as described in subsection (1)(b) of this section shall be given  
25 preference by the court. An order for out-of-home placement may be  
26 made only if the court finds that reasonable efforts have been made to  
27 prevent or eliminate the need for removal of the child from the child's  
28 home and to make it possible for the child to return home, specifying  
29 the services, including housing assistance, that have been provided to  
30 the child and the child's parent, guardian, or legal custodian, and  
31 that preventive services have been offered or provided and have failed  
32 to prevent the need for out-of-home placement, unless the health,  
33 safety, and welfare of the child cannot be protected adequately in the  
34 home, and that:

35 (a) There is no parent or guardian available to care for such  
36 child;

37 (b) The parent, guardian, or legal custodian is not willing to take  
38 custody of the child; or

1 (c) The court finds, by clear, cogent, and convincing evidence, a  
2 manifest danger exists that the child will suffer serious abuse or  
3 neglect if the child is not removed from the home and an order under  
4 RCW 26.44.063 would not protect the child from danger.

5 (4) If the court has ordered a child removed from his or her home  
6 pursuant to subsection (1)(b) of this section, the court shall consider  
7 whether it is in a child's best interest to be placed with, have  
8 contact with, or have visits with siblings.

9 (a) There shall be a presumption that such placement, contact, or  
10 visits are in the best interests of the child provided that:

11 (i) The court has jurisdiction over all siblings subject to the  
12 order of placement, contact, or visitation pursuant to petitions filed  
13 under this chapter or the parents of a child for whom there is no  
14 jurisdiction are willing to agree; and

15 (ii) There is no reasonable cause to believe that the health,  
16 safety, or welfare of any child subject to the order of placement,  
17 contact, or visitation would be jeopardized or that efforts to reunite  
18 the parent and child would be hindered by such placement, contact, or  
19 visitation. In no event shall parental visitation time be reduced in  
20 order to provide sibling visitation.

21 (b) The court may also order placement, contact, or visitation of  
22 a child with a step-brother or step-sister provided that in addition to  
23 the factors in (a) of this subsection, the child has a relationship and  
24 is comfortable with the step-sibling.

25 (5) If the court has ordered a child removed from his or her home  
26 pursuant to subsection (1)(b) of this section and placed into  
27 nonparental or nonrelative care, the court shall order a placement that  
28 allows the child to remain in the same school he or she attended prior  
29 to the initiation of the dependency proceeding when such a placement is  
30 practical and in the child's best interest.

31 (6) If the court has ordered a child removed from his or her home  
32 pursuant to subsection (1)(b) of this section, the court may order that  
33 a petition seeking termination of the parent and child relationship be  
34 filed if the requirements of RCW 13.34.132 are met.

35 (7) If there is insufficient information at the time of the  
36 disposition hearing upon which to base a determination regarding the  
37 suitability of a proposed placement with a relative or other suitable  
38 person, the child shall remain in foster care and the court shall

1 direct the department or supervising agency to conduct necessary  
2 background investigations as provided in chapter 74.15 RCW and report  
3 the results of such investigation to the court within thirty days.  
4 However, if such relative or other person appears otherwise suitable  
5 and competent to provide care and treatment, the criminal history  
6 background check need not be completed before placement, but as soon as  
7 possible after placement. Any placements with relatives or other  
8 suitable persons, pursuant to this section, shall be contingent upon  
9 cooperation by the relative or other suitable person with the agency  
10 case plan and compliance with court orders related to the care and  
11 supervision of the child including, but not limited to, court orders  
12 regarding parent-child contacts, sibling contacts, and any other  
13 conditions imposed by the court. Noncompliance with the case plan or  
14 court order shall be grounds for removal of the child from the  
15 relative's or other suitable person's home, subject to review by the  
16 court.

17 **Sec. 28.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to  
18 read as follows:

19 A court may order that a petition seeking termination of the parent  
20 and child relationship be filed if the following requirements are met:

21 (1) The court has removed the child from his or her home pursuant  
22 to RCW 13.34.130;

23 (2) Termination is recommended by the supervising agency;

24 (3) Termination is in the best interests of the child; and

25 (4) Because of the existence of aggravated circumstances,  
26 reasonable efforts to unify the family are not required.

27 Notwithstanding the existence of aggravated circumstances, reasonable  
28 efforts may be required if the court or department determines it is in  
29 the best interests of the child. In determining whether aggravated  
30 circumstances exist by clear, cogent, and convincing evidence, the  
31 court shall consider one or more of the following:

32 (a) Conviction of the parent of rape of the child in the first,  
33 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
34 9A.44.079;

35 (b) Conviction of the parent of criminal mistreatment of the child  
36 in the first or second degree as defined in RCW 9A.42.020 and  
37 9A.42.030;

1 (c) Conviction of the parent of one of the following assault  
2 crimes, when the child is the victim: Assault in the first or second  
3 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child  
4 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

5 (d) Conviction of the parent of murder, manslaughter, or homicide  
6 by abuse of the child's other parent, sibling, or another child;

7 (e) Conviction of the parent of attempting, soliciting, or  
8 conspiring to commit a crime listed in (a), (b), (c), or (d) of this  
9 subsection;

10 (f) A finding by a court that a parent is a sexually violent  
11 predator as defined in RCW 71.09.020;

12 (g) Failure of the parent to complete available treatment ordered  
13 under this chapter or the equivalent laws of another state, where such  
14 failure has resulted in a prior termination of parental rights to  
15 another child and the parent has failed to effect significant change in  
16 the interim. In the case of a parent of an Indian child, as defined in  
17 (~~the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903)~~)  
18 section 4 of this act, the court shall also consider tribal efforts to  
19 assist the parent in completing treatment and make it possible for the  
20 child to return home;

21 (h) An infant under three years of age has been abandoned;

22 (i) Conviction of the parent, when a child has been born of the  
23 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest  
24 under RCW 9A.64.020.

25 **Sec. 29.** RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are  
26 each reenacted and amended to read as follows:

27 (1) Whenever a child is ordered removed from the home, a permanency  
28 plan shall be developed no later than sixty days from the time the  
29 supervising agency assumes responsibility for providing services,  
30 including placing the child, or at the time of a hearing under RCW  
31 13.34.130, whichever occurs first. The permanency planning process  
32 continues until a permanency planning goal is achieved or dependency is  
33 dismissed. The planning process shall include reasonable efforts to  
34 return the child to the parent's home.

35 (2) The agency supervising the dependency shall submit a written  
36 permanency plan to all parties and the court not less than fourteen  
37 days prior to the scheduled hearing. Responsive reports of parties not

1 in agreement with the department's or supervising agency's proposed  
2 permanency plan must be provided to the department or supervising  
3 agency, all other parties, and the court at least seven days prior to  
4 the hearing.

5 The permanency plan shall include:

6 (a) A permanency plan of care that shall identify one of the  
7 following outcomes as a primary goal and may identify additional  
8 outcomes as alternative goals: Return of the child to the home of the  
9 child's parent, guardian, or legal custodian; adoption, including a  
10 tribal customary adoption as defined in section 4 of this act;  
11 guardianship; permanent legal custody; long-term relative or foster  
12 care, until the child is age eighteen, with a written agreement between  
13 the parties and the care provider; successful completion of a  
14 responsible living skills program; or independent living, if  
15 appropriate and if the child is age sixteen or older. The department  
16 or supervising agency shall not discharge a child to an independent  
17 living situation before the child is eighteen years of age unless the  
18 child becomes emancipated pursuant to chapter 13.64 RCW;

19 (b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(+5)~~)  
20 (6), that a termination petition be filed, a specific plan as to where  
21 the child will be placed, what steps will be taken to return the child  
22 home, what steps the supervising agency or the department will take to  
23 promote existing appropriate sibling relationships and/or facilitate  
24 placement together or contact in accordance with the best interests of  
25 each child, and what actions the department or supervising agency will  
26 take to maintain parent-child ties. All aspects of the plan shall  
27 include the goal of achieving permanence for the child.

28 (i) The department's or supervising agency's plan shall specify  
29 what services the parents will be offered to enable them to resume  
30 custody, what requirements the parents must meet to resume custody, and  
31 a time limit for each service plan and parental requirement.

32 (ii) Visitation is the right of the family, including the child and  
33 the parent, in cases in which visitation is in the best interest of the  
34 child. Early, consistent, and frequent visitation is crucial for  
35 maintaining parent-child relationships and making it possible for  
36 parents and children to safely reunify. The supervising agency or  
37 department shall encourage the maximum parent and child and sibling  
38 contact possible, when it is in the best interest of the child,

1 including regular visitation and participation by the parents in the  
2 care of the child while the child is in placement. Visitation shall  
3 not be limited as a sanction for a parent's failure to comply with  
4 court orders or services where the health, safety, or welfare of the  
5 child is not at risk as a result of the visitation. Visitation may be  
6 limited or denied only if the court determines that such limitation or  
7 denial is necessary to protect the child's health, safety, or welfare.  
8 The court and the department or supervising agency should rely upon  
9 community resources, relatives, foster parents, and other appropriate  
10 persons to provide transportation and supervision for visitation to the  
11 extent that such resources are available, and appropriate, and the  
12 child's safety would not be compromised.

13 (iii) A child shall be placed as close to the child's home as  
14 possible, preferably in the child's own neighborhood, unless the court  
15 finds that placement at a greater distance is necessary to promote the  
16 child's or parents' well-being.

17 (iv) The plan shall state whether both in-state and, where  
18 appropriate, out-of-state placement options have been considered by the  
19 department or supervising agency.

20 (v) Unless it is not in the best interests of the child, whenever  
21 practical, the plan should ensure the child remains enrolled in the  
22 school the child was attending at the time the child entered foster  
23 care.

24 (vi) The supervising agency or department shall provide all  
25 reasonable services that are available within the department or  
26 supervising agency, or within the community, or those services which  
27 the department has existing contracts to purchase. It shall report to  
28 the court if it is unable to provide such services; and

29 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+5)~~) (6),  
30 that a termination petition be filed, a specific plan as to where the  
31 child will be placed, what steps will be taken to achieve permanency  
32 for the child, services to be offered or provided to the child, and, if  
33 visitation would be in the best interests of the child, a  
34 recommendation to the court regarding visitation between parent and  
35 child pending a fact-finding hearing on the termination petition. The  
36 department or supervising agency shall not be required to develop a  
37 plan of services for the parents or provide services to the parents if  
38 the court orders a termination petition be filed. However, reasonable

1 efforts to ensure visitation and contact between siblings shall be made  
2 unless there is reasonable cause to believe the best interests of the  
3 child or siblings would be jeopardized.

4 (3) Permanency planning goals should be achieved at the earliest  
5 possible date. If the child has been in out-of-home care for fifteen  
6 of the most recent twenty-two months, the court shall require the  
7 department or supervising agency to file a petition seeking termination  
8 of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In  
9 cases where parental rights have been terminated, the child is legally  
10 free for adoption, and adoption has been identified as the primary  
11 permanency planning goal, it shall be a goal to complete the adoption  
12 within six months following entry of the termination order.

13 (4) If the court determines that the continuation of reasonable  
14 efforts to prevent or eliminate the need to remove the child from his  
15 or her home or to safely return the child home should not be part of  
16 the permanency plan of care for the child, reasonable efforts shall be  
17 made to place the child in a timely manner and to complete whatever  
18 steps are necessary to finalize the permanent placement of the child.

19 (5) The identified outcomes and goals of the permanency plan may  
20 change over time based upon the circumstances of the particular case.

21 (6) The court shall consider the child's relationships with the  
22 child's siblings in accordance with RCW 13.34.130(~~(+3)~~) (4). Whenever  
23 the permanency plan for a child is adoption, the court shall encourage  
24 the prospective adoptive parents, birth parents, foster parents,  
25 kinship caregivers, and the department or other supervising agency to  
26 seriously consider the long-term benefits to the child adoptee and his  
27 or her siblings of providing for and facilitating continuing  
28 postadoption contact between the siblings. To the extent that it is  
29 feasible, and when it is in the best interests of the child adoptee and  
30 his or her siblings, contact between the siblings should be frequent  
31 and of a similar nature as that which existed prior to the adoption.  
32 If the child adoptee or his or her siblings are represented by an  
33 attorney or guardian ad litem in a proceeding under this chapter or in  
34 any other child custody proceeding, the court shall inquire of each  
35 attorney and guardian ad litem regarding the potential benefits of  
36 continuing contact between the siblings and the potential detriments of  
37 severing contact. This section does not require the department of  
38 social and health services or other supervising agency to agree to any

1 specific provisions in an open adoption agreement and does not create  
2 a new obligation for the department to provide supervision or  
3 transportation for visits between siblings separated by adoption from  
4 foster care.

5 (7) For purposes related to permanency planning:

6 (a) "Guardianship" means a dependency guardianship or a legal  
7 guardianship pursuant to chapter 11.88 RCW or equivalent laws of  
8 another state or a federally recognized Indian tribe.

9 (b) "Permanent custody order" means a custody order entered  
10 pursuant to chapter 26.10 RCW.

11 (c) "Permanent legal custody" means legal custody pursuant to  
12 chapter 26.10 RCW or equivalent laws of another state or a federally  
13 recognized Indian tribe.

14 **Sec. 30.** RCW 13.34.190 and 2010 c 288 s 2 are each amended to read  
15 as follows:

16 (1) Except as provided in subsection (2) of this section, after  
17 hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an  
18 order terminating all parental rights to a child only if the court  
19 finds that:

20 (a)(i) The allegations contained in the petition as provided in RCW  
21 13.34.180(1) are established by clear, cogent, and convincing evidence;  
22 or

23 (ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are  
24 established beyond a reasonable doubt and if so, then RCW 13.34.180(1)  
25 (c) and (d) may be waived. When an infant has been abandoned, as  
26 defined in RCW 13.34.030, and the abandonment has been proved beyond a  
27 reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

28 (iii) The allegation under RCW 13.34.180(2) is established beyond  
29 a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and  
30 (f) are established beyond a reasonable doubt, the court shall consider  
31 whether one or more of the aggravated circumstances listed in RCW  
32 13.34.132 exist; or

33 (iv) The allegation under RCW 13.34.180(3) is established beyond a  
34 reasonable doubt; and

35 (b) Such an order is in the best interests of the child.

36 (2) The provisions of chapter 13.--- RCW (the new chapter created  
37 in section 34 of this act) must be followed in any proceeding under

1 this chapter for termination of the parent-child relationship of an  
2 Indian child as defined in (~~25 U.S.C. Sec. 1903, no termination of~~  
3 ~~parental rights may be ordered in such proceeding in the absence of a~~  
4 ~~determination, supported by evidence beyond a reasonable doubt,~~  
5 ~~including testimony of qualified expert witnesses, that the continued~~  
6 ~~custody of the child by the parent or Indian custodian is likely to~~  
7 ~~result in serious emotional or physical damage to the child)) section  
8 4 of this act.~~

9 **Sec. 31.** RCW 26.10.034 and 2004 c 64 s 1 are each amended to read  
10 as follows:

11 (1)(~~(a)~~) Every petition filed in proceedings under this chapter  
12 shall contain a statement alleging whether the child is or may be an  
13 Indian child as defined in (~~25 U.S.C. Sec. 1903~~) section 4 of this  
14 act. If the child is an Indian child (~~as defined under the Indian~~  
15 ~~child welfare act, the provisions of the act~~), chapter 13.--- RCW (the  
16 new chapter created in section 34 of this act) shall apply.

17 (~~(b) Whenever the court or the petitioning party in a proceeding~~  
18 ~~under this chapter knows or has reason to know that an Indian child is~~  
19 ~~involved, the petitioning party shall promptly provide notice to the~~  
20 ~~child's parent or Indian custodian and to the agent designated by the~~  
21 ~~child's Indian tribe to receive such notices. Notice shall be by~~  
22 ~~certified mail with return receipt requested. If the identity or~~  
23 ~~location of the parent or Indian custodian and the tribe cannot be~~  
24 ~~determined, notice shall be given to the secretary of the interior in~~  
25 ~~the manner described in 25 C.F.R. 23.11. If the child may be a member~~  
26 ~~of more than one tribe, the petitioning party shall send notice to all~~  
27 ~~tribes the petitioner has reason to know may be affiliated with the~~  
28 ~~child.~~

29 (~~(c) The notice shall: (i) Contain a statement notifying the parent~~  
30 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~  
31 ~~the tribe of the tribe's right to intervene and/or request that the~~  
32 ~~case be transferred to tribal court.)~~)

33 (2) Every order or decree entered in any proceeding under this  
34 chapter shall contain a finding that the federal Indian child welfare  
35 act or chapter 13.--- RCW (the new chapter created in section 34 of  
36 this act) does or does not apply. Where there is a finding that the  
37 federal Indian child welfare act or chapter 13.--- RCW (the new chapter

1 created in section 34 of this act) does apply, the decree or order must  
2 also contain a finding that all notice (~~(requirements)~~) and evidentiary  
3 requirements under the federal Indian child welfare act and chapter  
4 13.--- RCW (the new chapter created in section 34 of this act) have  
5 been satisfied.

6 **Sec. 32.** RCW 26.33.040 and 2004 c 64 s 2 are each amended to read  
7 as follows:

8 (1)(a) Every petition filed in proceedings under this chapter shall  
9 contain a statement alleging whether the child is or may be an Indian  
10 child as defined in (~~(25 U.S.C. Sec. 1903)~~) section 4 of this act. If  
11 the child is an Indian child (~~(as defined under the Indian child~~  
12 ~~welfare act, the provisions of the act)~~), chapter 13.--- RCW (the new  
13 chapter created in section 34 of this act) shall apply.

14 (b) Every order or decree entered in any proceeding under this  
15 chapter shall contain a finding that the federal Indian child welfare  
16 act or chapter 13.--- RCW (the new chapter created in section 34 of  
17 this act) does or does not apply. Where there is a finding that the  
18 federal Indian child welfare act or chapter 13.--- RCW (the new chapter  
19 created in section 34 of this act) does apply, the decree or order must  
20 also contain a finding that all notice requirements and evidentiary  
21 requirements under the federal Indian child welfare act and chapter  
22 13.--- RCW (the new chapter created in section 34 of this act) have  
23 been satisfied.

24 (c) In proceedings under this chapter, the adoption facilitator  
25 shall file a sworn statement documenting efforts to determine whether  
26 an Indian child (~~(as defined under the Indian child welfare act, 25~~  
27 ~~U.S.C. Sec. 1903,)~~) is involved.

28 (d) Whenever the court or the petitioning party knows or has reason  
29 to know that an Indian child is involved in any termination,  
30 relinquishment, or placement proceeding under this chapter, the  
31 petitioning party shall promptly provide notice to the child's parent  
32 or Indian custodian and to the agent designated by the child's Indian  
33 tribe to receive such notices. Notice shall be by certified mail with  
34 return receipt requested. If the identity or location of the parent or  
35 Indian custodian and the tribe cannot be determined, notice shall be  
36 given to the secretary of the interior in the manner described in 25

1 C.F.R. 23.11. If the child may be a member of more than one tribe, the  
2 petitioning party shall send notice to all tribes the petitioner has  
3 reason to know may be affiliated with the child.

4 (e) The notice shall: (i) Contain a statement notifying the parent  
5 or custodian and the tribe of the pending proceeding; and (ii) notify  
6 the tribe of the tribe's right to intervene and/or request that the  
7 case be transferred to tribal court.

8 (f) No termination, relinquishment, or placement proceeding shall  
9 be held until at least ten days after receipt of notice by the tribe.  
10 If the tribe requests, the court shall grant the tribe up to twenty  
11 additional days to prepare for such proceeding.

12 (2) Every petition filed in proceedings under this chapter shall  
13 contain a statement alleging whether the Soldiers and Sailors Civil  
14 Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the  
15 proceeding. Every order or decree entered in any proceeding under this  
16 chapter shall contain a finding that the Soldiers and Sailors Civil  
17 Relief Act of 1940 does or does not apply.

18 **Sec. 33.** RCW 74.13.350 and 2004 c 183 s 4 are each amended to read  
19 as follows:

20 It is the intent of the legislature that parents are responsible  
21 for the care and support of children with developmental disabilities.  
22 The legislature recognizes that, because of the intense support  
23 required to care for a child with developmental disabilities, the help  
24 of an out-of-home placement may be needed. It is the intent of the  
25 legislature that, when the sole reason for the out-of-home placement is  
26 the child's developmental disability, such services be offered by the  
27 department to these children and their families through a voluntary  
28 placement agreement. In these cases, the parents shall retain legal  
29 custody of the child.

30 As used in this section, "voluntary placement agreement" means a  
31 written agreement between the department and a child's parent or legal  
32 guardian authorizing the department to place the child in a licensed  
33 facility. Under the terms of this agreement, the parent or legal  
34 guardian shall retain legal custody and the department shall be  
35 responsible for the child's placement and care. The agreement shall at  
36 a minimum specify the legal status of the child and the rights and  
37 obligations of the parent or legal guardian, the child, and the

1 department while the child is in placement. The agreement must be  
2 signed by the child's parent or legal guardian and the department to be  
3 in effect, except that an agreement regarding an Indian child shall not  
4 be valid unless executed (~~((in writing before the court and filed with~~  
5 ~~the court as provided in RCW 13.34.245))~~ in accordance with section 15  
6 of this act. Any party to a voluntary placement agreement may  
7 terminate the agreement at any time. Upon termination of the  
8 agreement, the child shall be returned to the care of the child's  
9 parent or legal guardian unless the child has been taken into custody  
10 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant  
11 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

12 As used in this section, "out-of-home placement" and "out-of-home  
13 care" mean the placement of a child in a foster family home or group  
14 care facility licensed under chapter 74.15 RCW.

15 Whenever the department places a child in out-of-home care under a  
16 voluntary placement pursuant to this section, the department shall have  
17 the responsibility for the child's placement and care. The department  
18 shall develop a permanency plan of care for the child no later than  
19 sixty days from the date that the department assumes responsibility for  
20 the child's placement and care. Within the first one hundred eighty  
21 days of the placement, the department shall obtain a judicial  
22 determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the  
23 placement is in the best interests of the child. If the child's out-  
24 of-home placement ends before one hundred eighty days have elapsed, no  
25 judicial determination under RCW 13.04.030(1)(b) is required. The  
26 permanency planning hearings shall review whether the child's best  
27 interests are served by continued out-of-home placement and determine  
28 the future legal status of the child.

29 The department shall provide for periodic administrative reviews as  
30 required by federal law. A review may be called at any time by either  
31 the department, the parent, or the legal guardian.

32 Nothing in this section shall prevent the department from filing a  
33 dependency petition if there is reason to believe that the child is a  
34 dependent child as defined in RCW 13.34.030.

35 The department shall adopt rules providing for the implementation  
36 of chapter 386, Laws of 1997 and the transfer of responsibility for  
37 out-of-home placements from the dependency process under chapter 13.34  
38 RCW to the process under this chapter.

1       It is the intent of the legislature that the department undertake  
2 voluntary out-of-home placement in cases where the child's  
3 developmental disability is such that the parent, guardian, or legal  
4 custodian is unable to provide the necessary care for the child, and  
5 the parent, guardian, or legal custodian has determined that the child  
6 would benefit from placement outside of the home. If the department  
7 does not accept a voluntary placement agreement signed by the parent,  
8 a petition may be filed and an action pursued under chapter 13.34 RCW.  
9 The department shall inform the parent, guardian, or legal custodian in  
10 writing of their right to civil action under chapter 13.34 RCW.

11       Nothing in this section prohibits the department from seeking  
12 support from parents of a child, including a child with a developmental  
13 disability if the child has been placed into care as a result of an  
14 action under chapter 13.34 RCW, when state or federal funds are  
15 expended for the care and maintenance of that child or when the  
16 department receives an application for services from the physical  
17 custodian of the child, unless the department finds that there is good  
18 cause not to pursue collection of child support against the parent or  
19 parents.

20       NEW SECTION. **Sec. 34.** Sections 1 through 20 of this act  
21 constitute a new chapter in Title 13 RCW.

22       NEW SECTION. **Sec. 35.** RCW 13.34.250 (Preference characteristics  
23 when placing Indian child in foster care home) and 1979 c 155 s 53 are  
24 each repealed.

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